

Shivvam Awasthi & Ors.

Vs.

Vice Chancellor Jiwaji University and Ors.

19.01.2017

Shri Gaurav Mishra, counsel for the petitioners.

Ms. Anuradha Singh, counsel for the respondents / Jiwaji University.

1. The writ jurisdiction of this Court under Article 226 of the Constitution of India is invoked to assail the rustication order of seven petitioners who were pursuing their academic careers in different semesters in the B.E. Course imparted by the respondent / University.

2. With consent of the parties, arguments are heard on the question of admission and for final disposal.

3. The case of the petitioners in short is that petitioners No. 1 to 7 are peace loving students pursuing the undergraduate course in Engineering (B.E.) imparted by the respondents / University. Petitioners allege that they were victimized on 29.09.2016 by students of Aryabhatt hostel of the respondent / University leading to one of the petitioner sustaining injuries. It is alleged that instead of taking action against the said hostelers petitioners were rusticated by the impugned order Annexure P/1 dated 30.09.2016 without affording any opportunity to the petitioners in terms of the provision of clause 11 of Ordinance No.15 relating to maintenance of discipline amongst the students of the University teaching Department.

3.1 The respondent / University on the other hand represented by Ms. Anuradha Singh submits that numerous written complaints were made by different students of the University including girls students alleging misbehaviour, mental and physical torture and

polluting the academic atmosphere of the University. The copy of the complaints have been cumulatively filed as Annexure R/1. It is further submitted that petitioners have been involved in similar acts of misconduct at earlier occasions which is evident from Annexure R/2 dated 03.02.2016 suspending the admission of petitioner No.3 and debarring him from entering the premises of the University. It is submitted that the said petitioner No.3 admitting his mistakes sought apology vide Annexure R/3 and therefore the University taking a lenient view vide Annexur R/4 dated 23.04.3016 revoked his suspension. It is further informed that yet again by Annexure R-5 dated 10.06.2016 the University took disciplinary action of suspending petitioners No. 2, 3 & 5 namely Neeraj Rawat, Shivmohan Singh Tomar and Sanjay Patel respectively. It is informed that said suspension was also revoked subsequently keeping the academic careers of the petitioners in mind and based upon apology submitted by the said three petitioners vide Annexure R/6. Learned counsel for the respondent submits that thereafter the petitioners yet again were found involved in instances of indiscipline which compelled the respondent / University to constitute a Proctorial Board in terms of Ordinance No.15 on 28.09.2016 which heard the rival parties and suspended the admission of the petitioners vide Annexure R-8 pending enquiry and submission of report by the Proctorial Board. The Proctorial Board thereafter met on 29.09.2016 where all the petitioners were called and their statements were recorded. The Proctorial Board also recorded the statements of complainants. It is submitted that opportunity was afforded even to the parents of the petitioners to make their submission before the Proctorial Board. Thereafter it is informed by the counsel for the University that the Proctorial Board submitted its report on 29.09.2016 recommending all the seven petitioners to be rusticated. Finally the impugned order of

rustication was passed vide Annexure R-11 / Annexure P/1.

4. After hearing learned counsel for the parties, this Court took note of the provisions of Ordinance 15 which regulate the procedure of maintenance of discipline amongst students of University teaching Department. Clause 4 define acts of gross indiscipline which are reproduced below along with other provisions prescribing procedure for imposing minor and major punishment including rustication :-

“Clause4. The following acts, in particular, shall constitute act of gross indiscipline and any student indulge in any of them shall render himself liable for disciplinary action against him.

- (a) *Disobeying the teacher or misbehaving in the class.*
- (b) *Quarreling or fighting in any University building or in the campus among themselves.*
- (c) *Quarreling or fighting with a University employee or any employee of the University Canteen, mess or any other public utility functioning in the campus.*
- (d) *Behaving in the University campus or outside in a manner which is indecent or which is meant to annoy or harass the teachers, officers or employees or the University.*
- (e) *Any other act which the Discipline Committee may determine and the Kulapati may accept as an act of gross-indiscipline.*
- (f) *However all cases of discipline within Hostel Premises shall be dealt by the warden concerned. To deal with such incidents the warden shall have all the powers prescribed for the Proctor in this Ordinance.*

There shall be a Proctorial Board consisting of a Proctor and such number of Joint Proctors as the Executive Council may decide.

Clause 5. The Proctor and the Joint Proctor shall be appointed by the Kulapati from among the teachers of the University whose number shall be determined by the Kulapati for a period not exceeding two years, the Proctor so appointed may be removed by the Kulapati before completion of his turn of two years if he fails to discharge the duty well or if his activities are prejudicial to the interests of the University.

Clause 6. *The Proctor and each of the Joint Proctors shall be paid allowance as follows :-*

1. *Proctor* Rs.200.00 per month.
2. *Joint Proctor* Rs.100.00 per month

Clause 7. *Power and duties of the Proctor- The proctor shall take action in all the matters which are referred to him for disciplinary action by any responsible or constituted authority of the University. He may also take action in matters which come to his knowledge and which, in his opinion call for disciplinary action. However cases of discipline in examination halls shall be dealt with in accordance with provisions of relevant Ordinances.*

Clause 8:*The Proctor may delegate any of his powers to Joint Proctor / Joint Proctors. In the absence of Proctor the senior most Joint Proctor shall act as Proctor and shall have all such powers which are exercised by the Proctor.*

Clause 9.*If in the opinion of the Proctor the act of indiscipline requiring action is not of a serious nature, he may hold a summary inquiry and shall have powers to impose the following penalties:*

1. *a formal caution.*
2. *a fine not exceeding Rs.50.00.*

Clause 10. *If in the opinion of the Proctor, the breach of discipline is of a serious nature, he may refer the case for investigation by the Proctorial Board. Proctor and Joint Proctor or any two Joint Proctors shall constitute a quorum for sittings for such investigation.*

Clause 11. *The investigation by the Proctorial Board may include :-*

- (i) *Issue of show cause notice to the person / persons concerned specifying the nature of charge / complaint against him /them.*
- (ii) *Recording of statement of the accused person / persons and of such other person / persons as the Board may deem necessary.*
- (iii) *Examination of such other documents or evidences as the Proctorial Board may find necessary.*

Clause 12. (a) *After investigation the Board may recommend imposition of fine and / or other punishment which could include recommendation for rustication or expulsion of student / students also.*

(b) *Recommendations of imposition of fine not exceeding Rs. 50.00 shall be sent to the Proctor for action. All other recommendations shall be sent to the Kulapati who may accept the recommendation or pass such order thereon as he may deem fit.*

Clause 13. *In case of acts of indiscipline, which in the opinion of the Proctor are of very serious nature or which constitute a grave offence under the criminal law the investigation and action on the same may be entrusted to the Police. In all such cases the Proctor shall send a report to the Police and also inform the Registrar.*

Clause 14. *In the cases under investigation by the Proctorial Board or the Police, if the Proctor is of the opinion that immediate action is called for in the interest of maintenance of peace and discipline, he may recommend to the Kulapati that the student / students concerned be suspended from their classes pending investigation of their cases. If the Kulapati accepts the recommendation, the student / students shall be suspended by the Proctor from their classes for the period specified in the order of the Kulapati.”*

The Proctorial Board is thus empowered to enquire into acts of indiscipline.

5. The act of indiscipline alleged against the petitioners appears to be covered by clause 4(b) of Ordinance. The Proctorial Board is vested with the power of issuing formal caution and imposing fine not exceeding Rs. 50/- for acts of minor indiscipline. However the acts of breach of discipline of serious nature are prescribed to be referred for investigation by the Proctorial Board. The investigation contemplated by Clause-11 includes issuance of show cause notice to the person concerned specifying the nature of charge / complaint made against him /them followed by recording of statements of accused persons and of such other persons as the

Board thinks fit. The Board may also in its discretion permit examination of such other documents or evidence if it finds necessary. After concluding such process of investigation, the Board is empowered to impose fine and / or other punishment which can include recommendation for rustication or expulsion of student.

6. From a bare perusal of above procedure laid down in clause 11 of Ordinance No.15, it is evident that the Proctorial Board has to follow bare essentials of the requirement of natural justice by issuing show cause notice and informing the accused of the charges / complaint in writing and thereafter recording of statement of the accused and of any other person if required followed by examination of such other documents as the Board thinks fit and then recommend for imposition of appropriate punishment commensurate to the gravity of misconduct found established.

7. In the instant case, it appears that no show cause notice in writing was given to the petitioners specifying the charges / complaint against them thereby disabling them from effectively defending themselves. There is nothing on record to indicate that any written show cause notice was issued to any of the petitioners specifying the charges against them.

7.1 The principle of natural justice of *audi alterem partem* which is binding not only on judicial but also executive authorities, requires that reasonable opportunity of being heard should be afforded to the person before he is condemned / punished. The concept of "reasonable opportunity" includes the few essential elements which are as follows :-

- (i) Informing the accused of the charges alleged to enable him to respond to the same, and
- (ii) To afford opportunity to the accused to defend himself.

7.2 The principle of natural justice appears to have been violated

in the present case where the petitioners were not issued any written show cause notice informing the charges / complaint and therefore this Court is of the considered view that the impugned order of rustication is vitiated for having been passed in violation of the principle of *audi alterem partem* which is a facet of natural justice.

8. Before parting, it would be appropriate to observe that the edifice of academic institution stands on two pillars. These pillars are of merit and discipline. If either one of these is disturbed then the edifice may fall. A student should remember that their prime object is to gain knowledge. Indiscipline has no place in the process of imparting and gaining of knowledge. No doubt, any kind of indiscipline in an academic institution should be dealt with, with iron hand, but while doing so the procedure prescribed by law in that regard ought to be followed to the hilt so that no occasion arises for rendering the order of punishment invalid on account of some technical or procedural lapse. This Court has no manner of doubt that the respondent / University is an academic institution of great repute which zealously guards its name and fame which it has earned in the last so many decades and shall not allow unscrupulous elements to tarnish this image.

9. Accordingly, the present petition for the reasons mentioned above, is disposed of with following directions :-

- (i) The impugned order of rustication dated 30.09.2016 (Annexure P/1) passed by the University is set aside.
- (ii) The University is directed to follow the process contained in Ordinance 15 especially clause 11 and 12 before proceeding against the petitioners, if so advised.
- (iii) This court hastens to add that no finding or opinion is expressed on the tenability of the charges alleged against the petitioners and the competent authority of the

respondent / University is free to take suitable action against the petitioners in accordance with law.

(iv) No cost.

(Sheel Nagu)
Judge
19/01/2017

(S.A. Dharmadhikari)
Judge
19/01/2017

sarathe/-